

APPEAL NO. 031986
FILED SEPTEMBER 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 24, 2003. The appellant (claimant) appeals the hearing officer's decision that she is not entitled to supplemental income benefits (SIBs) for the sixth, seventh, eighth, and ninth quarters, and that since she was not entitled to SIBs for the third, fourth, fifth, and sixth quarters, she permanently lost entitlement to SIBs because of her nonentitlement for 12 consecutive months. The claimant appeals, contending that the great weight of the evidence is contrary to the hearing officer's decision. The respondent (carrier) asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods for the sixth through the ninth quarters. The claimant contended that during the relevant qualifying periods, she returned to work in a position which was relatively equal to her ability to work. Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. The claimant appeals the hearing officer's finding that "Claimant did not make a good faith effort to obtain employment or to return to work in a position commensurate with her ability to work during the qualifying periods for the 6th through the 9th quarters of [SIBs]." The claimant also appeals the hearing officer's conclusion of law that the claimant is not entitled to SIBs for the sixth through the ninth quarters. Whether the claimant met the requirements of Rule 130.102(d)(1) to show a good faith effort was a fact question for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the relevant qualifying periods and that she is not entitled to SIBs for the sixth through the ninth quarters are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant appeals the hearing officer's finding of fact that by failing to qualify for SIBs for the sixth quarter, the claimant lost entitlement to further quarters of SIBs

under Rule 130.106, and the hearing officer's conclusion of law that in failing to qualify for SIBs for the third through the sixth quarters of SIBs, the claimant has permanently lost entitlement to SIBS because of her nonentitlement for 12 consecutive months. Section 408.146(c) provides that an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury. See *also* Rule 130.106(a), which provides that an injured employee who is not entitled to SIBs for a period of four consecutive quarters permanently loses entitlement to such benefits. In Texas Workers' Compensation Commission Appeal No. 021589, decided August 8, 2002, the Appeals Panel affirmed a hearing officer's decision that the claimant was not entitled to SIBs for the third, fourth, and fifth quarters. Since the claimant was previously determined not to be entitled to SIBs for the third through the fifth quarters, and since we are affirming the hearing officer's determination that the claimant is not entitled to SIBs for the sixth quarter, we find no error in the hearing officer's determination that the claimant has permanently lost entitlement to SIBs.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge